Case 3:03-cv 00174-RRB in hourly wage. The AWHA r. (1) The the answered by using the cut the processary to employ an employee each well of 40 hours a week or eight hours a resistion for the overtime at the the salar each one-half times the regular process.

AWHA does not itself deline what ale of pay means for a worker deeves, receives an annual saint an hourly wage. Title 8, section of the Alaska Administrative Code resses this issue. It provides that as of computing overtime compansalary must be converted to age figured on a weekly basis:

employee's regular rate is a computing overtime. The regular a hourly rate figured on a weeks an hourly rate. However, the compensation hasis must be compensation hasis must be compensation for rate for computing overtical tion.

paragraphs of this regulation to the methods for converting satisfiate of pay. The first allows ployee's regular rate of pay in comment contract, but only if artisfier and worker, and only if action forms to those expectations:

rticular regulation to be "quasi-legis appropriate page 1981, and page 1981, and

60(b). This provision applies as contracts. See AS 23,10,060(c)

(1) The employment contract must set out the appropriate number of bours the enployer is expected to work each day and each week. The contract must establish a regular hourly rate of pay with respect to the salary to be paid and the hours to be worked. Changes to the pay schedule of a salaried employee must conform to the provisions of AS 23.05.160.6

The second subparagraph applies in default of the first; it requires that, in the absence of an employment contract complying with subparagraph (a)(1), the worker's salary must be deemed compensation for a forty-hour week of eight-hour days:

(2) If a contract fails to establish a fixed inniher of daily and weekly hours for which the salary is intended to compensate, or if the actual hours of work deviate from the hours specified in the contract, the salary will be considered to be compensation for an eight-hour work day and 40-hour workweek, and overtime will be computed on that basis.

This is the provision that the superior court selled on to calculate Reeves's overtime sward.

## B: The Parties' Arguments

An appeal, PMC does not dispute that the superior court correctly applied 8 AAC \$6.100(a)(2) to convert Reeves's annual salary to regular hourly rate of pay, or that it deferently determined, on that basis, how much overtime pay Reeves actually earned. But it questions the court's assumption that all of Reeves's earned overtime wages should abo treated as being unpaid. PMC draws a distinction between the total amount of overjame wages earned on the basis of regular the of pay and the total amount of "overtime damages"—PMC's term for the total amount desovertime earnings remaining unpaid. AG argues that 8 AAC 15.100(a)(2) applies Designmenting overtime earnings, but not in the elimining the ultimate issue of "overtime

AAC 15,100(a)(1).

\$ AAC 15.100(a)(2).

8 AAC 15.110(a).

See supra note 3. Reeves concedes that he was fulltime employee of PMC. He acknowledged

damages." PMC proposes that, for purposes of determining overtime damages, the overtime rate of pay calculated under 8 AAC 15,100(a)(2) should be plugged into a federal formula, applicable for purposes of determining overtime damages under the Fair Labor Standards Act (FLSA), 29 U.S.C. § 207(a)(1) (1994), whose terms would vary depending on how Reeves's employment contract with PMC is interpreted. But the federal formula and the cases PMC cites supporting it are inapposite in the context of the AWHA, since the FLSA contains no provision analogous to 8 AAC 15.100(a)(2). Thus we need not discuss the federal formula proposed by PMC or the federal case law it cites.

Recves, for his part, defends the court's award of damages. He insists that the method of computing overtime compensation set out in S AAC 15.100(a)(2) encompasses "overtime damages," as well as overtime earnings. According to Reeves, subparagraph: (a)(2) "allocates the entire salary to regular hours and allocates nothing to the overtime hours." Reeves thus maintains that the court correctly treated all of his overtime earnings as overtime damages.

We conclude that each party's argument is only partially persuasive. To explain our conclusion, we begin by reviewing the manner in which the trial court arrived at Reeves's total overtime earnings. Then we consider whether the court correctly treated all of his overtime earnings as overtime damages.

C. The Superior Court Correctly Calculated How Much Overtime Pay Reeves Earned.

PMC paid Recves an annual salary of \$57,-876. To convert this annual salary to a regular rate of pay, the court was first required to "figuref |" this annual salary "on a weekly basis." <sup>10</sup> Reeves's annual salary translated to a weekly salary of \$1113.11

below that his annual salary must be divided by fifty-two weeks, rather than by his twenty-six actual workweeks per year, to derive his regular weekly rate of pay. On appeal, Reeves does not dispute that the court correctly computed his overtime earnings on that basis.

Exhibit A page 4 of 7

30(a).

Next, since Reeves's regular rate of pay was not set by an employment contract, the court converted his salary to a regular hourly rate by the method specified in 8 AAC 15.100(a)(2); treating Reeves's \$1113 weekly salary as straighttime compensation for eight-hour workdays totaling forty hours of work per week, the court determined his regular hourly wage to be \$27.83, and his overtime rate to be \$41.74.12

The court then used this overtime rate to compute Reeves's overtime earnings. In sixty weeks of salaried employment at \$1118 per week, Reeves received pay totaling \$66,-780.12 During this time, because of his twoweeks-on/two-weeks-off work schedule. Reeves actually worked only thirty weeks, averaging minety-eight hours (seven fourteen-hour workdays) of work each workweek. for a total of 2940 hours.11 Of this total, 1200 hours were straighthime; 1740 were overtime.15 Multiplying Reeves's 1740 actual overtime hours by his \$41.74 hourty overtime rate of pay, the court figured his earned overtime pay to be \$72,627.60.16

While the parties contested various aspects of this computation below, on appeal the parties no longer challenge the court's conclusion that Recves actually earned \$72,-627.60 in overtime pay; nor do they dispute the method of converting salary to regular pay that led the court to reach this conclusion. Thus it is undisputed that the court correctly applied 8 AAC 15.100(a)(2) to answer the first question posed in determining Reeves's overtime damages: how much overtime did Reeves earn?

- D. After Computing How Much Overtime Pay Reeves Earned, the Court Erred in Failing to Consider Separately How Much Pay PMC Still Owed Him.
- [2] Upon determining how much overtime Reeves earned, the court, without fur-
- 12. See al.
- 13. 60 weeks of salary at \$1513 per anomsh = \$66,780 total salary.
- See supra none 1
- 15. Sec id.

ther explanation, awarded him the entire: amount of his overtime earnings as overtime damages. In failing to consider separately how much of Reeves's earned overtime wages PMC still owed him, the court made two tacit assumptions: first, that none of Reeves's overtime earnings had yet been paid; and, second, that all of his previously. paid salary should count as straighttime compensation, no matter how few straighttime hours Reeves had actually worked.

Reeves insists that the court correctly applied 8 AAC 15.100(a)(2) in reaching this result. He reasons that subparagraph (a)(2) is clear on its face. It expressly provides the salary "will be considered to be compensation for an eight-hour work day and 40-hour workweek ... " Contrary to PMC's claims, this regulation does more. than simply define the regular and overlime rates; it provides that the salary is the compensation for a regular workweek

But subparagraph (a)(2) is not a freestanding provision; it must be read in the concext of 8 AAC 15.100(a) as a whole. In its opening sentences, 8 AAC 15.100(a) defines regular rate of pay as "an hourly rate figured on a weekly basis" and provides that samy "must be converted to an hourly rate when; determining the regular rate[.]" This provision requires Reeves's annual salary to be "figured" as a weekly salary; his weekly salary—81113—is what subparagraph (a)(2): refers to in commanding that "the salary will be considered to be compensation for an eight-hour work day and 40-hour work week."

Moreover, subparagraph (a)(2) does not directly define overtime damages; it merely prescribes the correct method by which worker's salary "must be converted to at hourly rate ... for computing overtime comes pensation," 47 Because paragraph (a) specifies that "the regular rate is the basis for computing overtime," subparagraph (a)/2):

- 16. 1740 overtime hours × \$41.74 per hour over. time pay (based on 1.5 × the regular hourly rets) uf S27.83) = S72,627.60,
- 17. 8 AAC 15.100(a).

cannot in itself be considerstime damages. Instead, it. that, once the regular rate by following subparagraph process, paragraph (a) effe. rate determinative of oversaprescribing that it be used computing overtime."

> Thus, when read in light esubparagraph (a)(2) does proposition that Recves's  $\epsilon$ : ry should automatically be pensation for whatever straig actually worked. Rather, fiarrower and more sensible each week of Reeves's salar ed as compensation for a corr of actual straighttime work gate of pay. In effect the (a)(2) strives to ensure that s like hourly workers, are com basis of their regular rate of mours they actually work.

So construed, 8 AAC 15.10 a salaried worker's overtime be ineasured by the differer stotal salary actually paid ⊱ and the total ways earned : for all hours actually workand overtime-based on the pay. Because the different pay earned and total salary reflect the additional wages : sure payment based on the all hours actually worked. must serve as the primary n in damages. As a seconda. Mierence must be doubled induidated damages. See AS:

[3] Accordingly, 8 AAC a (a)(2) require a salaried wor. phipaid overtime compensation ed by: (1) "figuring" the work weekly basis; (2) assuming to Salary represents pay for a w time work; (3) using the "r

- Sec supra note 14.
- See supra note 1.
- See short note 3.
- Sec salora nate 17.

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ion, awarded him the entire evertime earthings as overtime failing to consider separately Reeves's carned overtime ...ll owed him, the court madeunations: Arst, that none or time earnings had yet been and, that all of his previously old count as straighttime commatter how few straighttime ad actually worked.

as that the court correctly and 15.100(a)(2) in reaching this asons that subparagraph (a)(2); ts face. It expressly provides will be considered to be comr an eight-hour work day and orkweek...." Contrary ras es, this regulation does more? define the regular and overit provides that the salary as ation for a regular workweek, graph (a)(2) is not a freestand must be read in the context: id(a) as a whole. In its open-ಕ AAC 15,100(a) defines regis as "an hourly rate figured on a is" and provides that salary crited to an hourly rate when e regular rate[.]" This provide Reeves's annual salary to be weekly salary; his weekly -is what subparagraph (a)(2) umanding that "the salary will to be compensation for any rk day and 40-hour works

abparagraph (a)(2) does not overlime damages; it merely correct method by which a v "must be converted to zago for computing overtime com-Because paragraph (a) specific regular rate is the basis for ertime," subparagraph (a)(2)(3)

me hours × \$41.74 per hour over o on 1.5 × the regular hourly rates 72,627.60.

00(a).

cannot in itself be considered to define overtime damages. instead, it seems apparent that, once the regular rate of pay is derived by following subparagraph (a)(2)'s conversion grocess, paragraph (a) effectively makes the rate determinative of overtime namages by prescribing that it be used "as the basis for computing overtime."

Thus, when road in light of paragraph (a), supporagraph (a)(2) does not support the aroposition that Reeves's entire annual salary should automatically be treated as compensation for whatever straighttime hours he actually worked. Rather, it stands for the narrower and more sensible proposition that each week of Reeves's salary should be treat- 🕥 ed as compensation for a corresponding week of actual straighttime work at his regular rate of pay. In effect then, subparagraph  $\int$ (a)(2) strives to ensure that salaried workers. like hourly workers, are compensated on the basis of their regular rate of pay for all of the hours they actually work.

So construed, 8 AAC 15.100(a)(2) requires a salaried worker's overtime compensation to be measured by the difference between the hotal salary actually paid by the employer and the total wages earned by the employee for all hours actually worked-straighttime and overtime—based on the regular rate of pay. Because the difference between total pay carned and total salary paid will always reflect the additional wages necessary to ensure payment based on the regular rate for all hours actually worked, this difference must serve as the primary measure of overtime damages. As a secondary measure, this difference must be doubled to account for liquidated damages. See AS 23,10,110.

[3] Accordingly, 8 AAC 15.100(a) and (a)(2) require a salaried worker's award for simpaid overtime compensation to be computed by: (1) "figuring" the worker's salary on a weekly basis; (2) assuming that the week of Salary represents pay for a week of straighttime work; (8) using the "regular rate" of

- 18. See supra note 14.
- 19. See supra note 1.
- 3-20. See supra note 3.
- 21: See supra note 17.

hourly pay derived from this assumption as the pasis for determinize the worker's total compensation for all hours actually worked; and (4) deducting from this amount all amounts of salary actually paid.

Applying this approach to Reeves's situation yields the following computation. In his sixty weeks of work at an annual salary of \$57,876. Reeves received pay totaling \$66,-780.18 During this time, he actually worked s total of 2940 hours. Of that total, 1200 hours were straighttime; 1740 were overtime.19 -Under 8 AAC 15.100(a)(2), his weekly salary was \$1113, and so his regular rate of pay was \$27.83 per hour and his overtime rate was \$41.74.20 Applying the overtime rate to Reeves's overtime hours yields earned overtime pay of \$72,627.60; 21 applying the regular rate of pay to Reeves's actual straighttime hours yields carned straighttime pay of \$33,396.00.22 The total of straighttime and overtime earnings is \$106,023.60.24

Based on his regular rate of pay, this is the amount that Reeves earned for the work that he actually performed. Deducting the \$66,780 in salary that PMC actually paid Reeves from the wages of \$106,023.60 that he actually earned leaves \$39,243.60. This is the amount of Recyes's overtime damages the overtime compensation that remains unpaid.

In many cases, the trial court's method might yield the same result; that method, again, was to simply treat all earned overtime wages as damages and all previously paid salary as actually earned straighttime pay. But, as we have seen, the court determined Reeves's regular rate of pay on the premise that each week of his annual salary would pay for a week of actual straighttime work. Yet because of his alternating work schedule, Reeves actually worked only half of the weeks for which he received annual salary. In sixty weeks of salaried employment,

- 1200 hours of straightrime wages x \$27.83 regular rate of pay per hour = \$33,396.00.
- 23. \$106,396.00 in straighttime pay + \$72,627.60 in overtime pay = \$106,023,60 total pay.

Exhibit The page 6 of The

he earned only thirty weeks of straighttime pay.

Under these peculiar circumstances, treating all of Reeves's salary as straighttime pay and all of his earned overtime as damages would yield an anomalous result: the salary PMC paid Reeves would amount to straighttime pay of \$55.65 per hour, or twice the regular hourly rate of pay contemplated under 8 AAC 15.100(a)(2).24

Because this hourly rate doubles the regular rate imputed to Reeves under the regulation, it has no basis in law. And because no evidence in the record suggests that Reeves's sixty weeks of salary were actually intended to pay only forty hours per week of straighttime wages for thirty workweeks.25 this rate of pay has no basis in reality, either. Nor can Reeves plausibly justify this enhanced rate of pay as an intended or appropriate sanction for PMC's failure to make timely payment of his full overtime wages. The liquidated damages provision of AS 23.10.110 already imposes the appropriate measure of punishment for PMC's late payment.28

In short, to count Reeves's entire sixty weeks of safary as pay for only thirty weeks of actual straighttime work would violate subparagraph (a)(Z)'s mandate to consider each week of his salary as a week of straighttime pay.

## HI. CONCLUSION

- [4] We thus conclude that the trial court erred in treating Reeves's entire salary as straighttime pay. We hold that a court converting annual salary to a regular rate of hourly pay under 8 AAC 15.100(a)(2) must
- 24. Actual pay of \$66,780 ÷ 1200 actual straightsime hours = \$35.65 per hour, \$55.65 % 2 a \$27.825.
- 28. As we have previously observed, Reeves himself understood his salary to cover a two-weekon/two-week-off schedule of seven days a week at approximately twelve hours a day.
- 26. See McKenun v. Kinney Shoe Corp., 820 P.2d 1068 (Alaska 1991); Alaska Int'l Indus. Inc. v. Musarro, 602 P.2d 1240 (Alaska 1979). Moreover, automatic treatment of all earned overtime as actual damages would be wholly arbitrary if construed as an added sanction for late payment of overtime. Such a sanction would, for no apparent reason, single out for additional punishment those nonpaying employers with workers on irregular schedules. Besides being arbi-

use the regular rate as a basis for computings total carnings for all hours actually workeds All salary actually paid must be deducted from these total earnings. The differences will reflect the award necessary to ensure that straighttime, overtime, and total compensation are all based on the applicable regular rate of pay. This is the proper megsure of Reeves's overtime damages.

Because the trial court's decision to treatall of Reeves's earned overtime pay as unpaid overtime wages would pay Reeves at twice his regular rate for his actual straight. time hours, we REVERSE the judgment and REMAND for recalculation of damages in a manner consistent with this opinion.



STATE of Alaska, Petitioner,

DUTCH HARBOR SEAFOODS, LTD., Respondent.

STATE of Alaska, Petitioner,

TRIDENT SEAFOODS CORP. Respondent.

No. 8-6919.

Supreme Court of Alaska.

Oct. 16, 1998.

Defendants were charged with strict liability commercial fishing violations. The Dis-

trary, a sanction of this kind would produce anomalous results. In the current case, for instance, it would have the effect of punishing PMC. for failing to recognize that Reeves might have been required to work increased hours for no. additional pay; had PMC known that Recues b entire salary would automatically be considered compensation for Reeves's straighttime hours, it could have required him to work thirty additionat 40-hour workweeks of straighttime for no additional pay. The added work would only have increased Reeves's straighttime hours. which his salary would already be deemed to cover; it would not have increased his overtime or affected his regular rate of pay, as calculated under 8 AAC 15.100(a)(2).

wiet Court, Third Judicial I ponald D. Hopwood, J., grav Sjotion for jury trial under A en, and State petitioned for The Court of Appeals mid State made further petit Court. The Supreme Court held that: (1) strict liability of ing violations did not qual prosecutions within right to Alaska constitution, and (2) monetheless eriminal rather fire and thus defendants had jiny trial

> · · · Reversed and remanded. Compton, C.J., filed diss-

# £ Jury ←21.1

No right to criminal j amder state constitution getarged with strict liability ring violations; strict liability Mare not "criminal prosecution offenses, size of potential finries of forfeiture of catch do no wien of criminality that con Fright, Const. Art. 1, § 11

See publication Words for other judicial construc mitions.

#### 2. Jury \$=21.1

Potential sanction of fo itid not give rise to right to Sixth Amendment on strict cial fishing violations, as for permedial than punitive. Amend. 6; AS 16.05.722.

### Fury ←14(1), 21.1

Strict liability commerc pions are minor criminal stance, rather than civil can

- This is a legal question to v judependent judgment. See 3 age Equal Rights Commin. i (Alaska 1994).
- 5 AAC 28,020 provides in rei (a) Before a person uses : groundfish gear in the territo ša, except for the Hastern God tion area, the vessel owner or

page \_\_\_\_of \_\_\_\_